Previous References:

Cls. 3–1872
" 5–1873
" 3–1876
" 11–1878
" 10–1879.
" 11–1879.

Later References

Cls. 3–1881 M.B

Courts
No 1879.
Cr. No. 1–5

Appointment of Mr.
T. P. Madhava Rao Asst. Comr.
as Public Prosecutor in
Sessions Case Govt.–
~~vs~~ Tirumalachary.

Indexed

No. 86.

Dy. Commissioner
Tumkur
Tumkur, 3d.

To,

The Secretary to the Chief Commissioner of Mysore.
General Department.

Sir,

It has already been brought to the Chief Commissioner's notice that in June last I appointed Mr. V. P. Madhava Row, Assistant Commissioner to conduct the prosecution in Criminal Case Government ~~vs~~ Sirumalachary late Amildar of Kunigal. In doing so I acted under the authority of Section 202 of the Criminal Procedure Code. At the last Tumkur Sessions Mr. V. P. Madhava Row and Mr. R. Smith Public Prosecutor were in joint charge of the prosecution in the said case. At the present Sessions Mr. R. Smith has withdrawn from the case on the ground that himself and Mr. V. P. Madhava Row are unable to agree in their views regarding the case, the point of disagreement being that Mr. Smith wishes to abandon and withdraw several of the charges framed

again

against the accused - I am of opinion that these charges should not be withdrawn, and as Mr Smith does not wish to act jointly with Mr V. P. Madhava Row I have placed the latter in sole charge of the case. It has been objected by the Counsel for the accused that the appointment of Mr V. P. Madhava Row is opposed to the proviso to section 202 of the Criminal Procedure code. The Session Judge has overruled the objection, and the Chief Commissioner has already ruled that such an objection can not be maintained. But it would prevent any objection being taken before the High Court. Hereafter if the Local Government will by a formal order under section 58 Criminal Procedure code appoint Mr V. P. Madhava Row as the Public Prosecutor for the prosecution of the particular case in question with effect from the 3rd September 1879. I have under these circumstances the honor to recommend that such an order may be immediately passed and communicated to

me

me by express.—

I have the honor to be,
Sir,
Your most obedient Servant.

Vethakan Iyer
Dy. Commissioner.

H.C.A.

1879. O. 2695

From
The Asst: Comm^r,
Tumkur Dt.

To
Secy: to Ch: Comm^r of Mysore.

Dated 23^d Sept^r 1879.
Rec^d 25 — —
No 806

For reason given, requests that an order may be passed appointing M^r V. P. Madhava Rao, Asst: Comm^r, Public Prosecutor in Sessions Case, Gov^t vs Tirumala Chari, late Amildar of Huniyal.

Vide Govt: Mr Camp 11 Oct 5 Sept 1879

Copy sent to Public Prosecutor Nagar

1879

Cl. 5
12 - 24

To
The Solicitor, Lucknow
Public Prosecutor
Nawabganj Bara

Campbellpore
Dy 5 Sessions Judge

Campbellpore 11

Forwarding Mr
V. Pollard Lucknow Asst Commr
as Public Prosecutor
in Sessions Case
Govt vs Lunnalal & Ors

From Public Prosecutor, Nawabganj Bara

Public Prosecutor in the
case pursuant ~~to~~ to
Criminal Calcutta.

Order thereon

Under Section 58
Act X of 1872 (Criminal
Procedure Code), Mr
V. V. Mudhavarkar
Offg Asst Commissioner
is appointed Public
Prosecutor for the case
or cases in which
Tirumalachari, Cole
Arunachalam & Kamjal,
is to be tried in the Court
of the Sandoway Sessions
Judge with effect
from the 1st Sept 1879.

Mr A. Smith's action,
as reported in the
above read letter,

is directly opposed to
the order of the Chief Com-
No. 3336/2 of 18th July 1879,
in which it was ruled
that a Public Prosecutor
has no authority
to act beyond his instructions.

Mr Justice desires
to know the grounds
upon which Mr Smith
acted in this course,
and he is therefore
requested to furnish
the Chief Commissioner
with a written
explanation on the
case. This should be
submitted through
the Head Master of Junkin,
who will, while forwarding
it to this Office, state
what were the particulars
Chief prepared to

and his friends
for rescuing our fellow
Citizen

W.L.
Secretary

To
The Sheriff of Cumberland
(by Express)
& Public Prosecutor
Carlisle Pa.

CC
5/9/74

2nd

2nd July. Mr Thumboo Chetty Disp ms.

pended the 6 remaining 22 charges & cleared the Amildar & he means to ad on the opinion that 'suspending' is acquitting the D.C. therefore asks that the order suspending be appealed agst

The charges remaining are grave and apparently they are well founded & is unsatisfactory therefore to have no enquiry into them & it cannot be thought that if the Accd is guilty of them he has been adequately punished by a fine of Rs 2000 therefore I think application should be made to the J.C. to direct the Sessions judge to try the case. I doubt if an appeal lies agst the order. but as a Ct of revision the J.C. can interfere

as to the D.C recommends the services of a special advocate to support in conviction if it is appealed agst and to move the Ct in the manner indicated above his reasons are given in Encl No 8 & perhaps they will be considered sufficient for the appt of a new Pub. Proc. altogether on this pt the D.C naturally wants Ex. parte orders.

17.9.

Draft by Secy 17/9/79

D 1879. 0.2831.

From

The Dy. Commissioner
Tumpur District

The Secretary to the Chief Commissioner of Mysore
General Department.

Dated 16th September 1879.

Received 18th —

No. 99. — Encls: No. 8.

Submits Report on Tumpur Sessions Cases Nos. 22 and 27 of 1879 - Government vs Timmalachary late Cutcherry of Huniyal.

The D.C. makes certain recommendations

1. In Sessions Case 22 Mr. T Chetty has found that the Accd cut down & appropriated Govt treas but that he cannot be convicted of Criml breach of trust as a pub servant for that. he has convicted him of theft & fined him 2000 rs & it has been paid The D.C. recommends that applic be made to Mr Sandford to revise the finding & sentence & convict under s 409 passing a proper & adequate sentence of imprisnt

No. 99.

The Commissioner's Office
Tumkur district
Tumkur 11th Septr. 1879.

The Secretary to the Chief Commissioner of Mysore.
General department.

Sir,

I have the honor to report as follows regarding Criml. Case Nos. 22 and 27 of 1879 on the file of the Sessions Judge of the Bundy droog division (Tumkur Sessions) Govt. vs Tirumalachari late Amildar of Kunigal, and to solicit the Chief Commissioner's orders regarding the further action required in regard to these cases and to other remaining charges against the accused.—

2.— The accused Tirumalachary was committed by me as District Magistrate for trial before the Court of Session upon Eleven charges under Section 409 of the Indian Penal Code. The evidence upon which this commitment was made is referred to in the enclosed Copy of my Ground of

× Enclosure No. 1.

of commitment."—

12

3.— The first six charges as framed in the case related to the fraudulent felling, removal and misappropriation of Government trees standing upon Government land.— At the Sessions held in the month of June last the first three of these charges only were tried, the trial of the remaining eight charges being adjourned to the September Sessions.— The Sessions Judge convicted the accused upon the three charges tried and sentenced him to one years rigorous imprisonment— and a fine of Rupees one thousand Upon appeal to the Jud. Commissioner, this sentence was reversed upon grounds set forth in the accompanying Copy of the Jud. Commissioner's Judgment. + Enclosure No. 2.

4.— The remaining eight charges came on for trial before the Judge at the Sessions held at Lumpur in the early part of this month. The first charge tried was the fourth.

fourth. Certain Preliminary objections taken by the Counsel for the accused were overruled* by the Judge, and the charge was duly tried and the accused convicted upon it & a sentence of Rs. 2000/- being passed.—

5.— The next charge tried was the fifth, also relating to the misappropriation of a tree, and upon this charge the accused was acquitted upon the grounds set forth in the accompanying copy of Judgment.—

6.— After this the Judge of his own accord directed under section 459 Criminal Procedure Code, "that the enquiry into the remaining charges be suspended". This order was passed notwithstanding the representation made by Mr. Ramadhava Row (Public Prosecutor for the case) that in the interests of Government it was desirable that the remaining charges should be tried. As soon as the order suspending enquiry into the remaining charges was passed, the accused who

*Vide enclosure No. 3. Copy of the Judge's Order.

&Vide Enclosure No. 4 - Copy of the Judgment & sentence in case No. 22.—

+Enclosure No. 5 Copy of Judg^t in case No. 27.

°Enclosure No. 6. Copy of the Judge's Order.

who was till then under custody was discharged unconditionally, shewing thereby that the Judge understood that the order for suspension of enquiry would operate as an acquittal. —

7.— The merits of the case for the Prosecution on the five charges already tried as well as on the six others not tried as yet can I believe be readily ascertained from the enclosures to this report already referred to. I am of opinion that the case is one in which special action on the part of the Local Government is required, not only for the protection of Government proprietory rights, but also in the higher interests of Public Justice. —

8.— In Sessions case No. 22 the Judge has held that the accused could not be convicted of Criminal Breach of Trust by a Public Servant. — He remarks upon this point as follows in his

his judgment:—

From the evidence of the 4th Witness Gundabiah Amildar of Tumkur Taluk, it appears that the preservation of Sircar trees rests primarily with the village officials and that the Amildar, as the head Revenue officer of the Taluk, is responsible for the due preservation of all Government trees in the Taluk. It may be inferred from this that the Amildar is virtually entrusted with the general care and custody of all the Government trees in his Taluk, but it is difficult to answer the question, whether the two particular trees felled were actually entrusted to the accused, when he was appointed as Amildar of the Taluk, or at any particular time subsequently, and before the commission of the offence imputed to him.— There is no evidence on this point, and the Judicial Commissioner in his judgment in appeal No. 49

49 of 1879, held, that it was neces-
sary to prove that the particular
property which the accused is
alleged to have converted to his
own use, was entrusted to him
when he was appointed Amildar
of the Kunigal Taluk. — In the
absence of any such proof, I
am unable to find that there
was an original trust or that
the trees in question were actually
entrusted to the accused. — If
there was no trust there could
be no Breach of Trust. —

This decision would have the
result of affecting injuriously
the proper care and protection
of what are termed "district
forests" in the Forest Rules. — It
would be impossible to put any
person in actual physical charge
of each separate Government tree.
All that could be done has already been done by Executive
Orders of the Governor General in
Council which in this Province
have the effect of Law. — The
revised Forest Rules of 8th June
1878 are quite explicit — as regards
the

the Amildar being entrusted with the whole of the district Forests, for Section 16 of those Rules lays down that "district Forests shall be in immediate charge of the Amildar of the Taluk" and that "the Amildar shall be responsible for their due protection". — These Forest Rules were not in operation when the offence in question was committed, but I think that the Rules then in force are also sufficiently clear upon the question of the Amildar's duty. Sections 4 and 11 of those Rules shew that the care of district Forests is by law placed under the management of Revenue officers and it is further shewn by Section 26 that upon them along with other officers is expressly imposed the duty of seeing that the forest rules are not violated. — Amildars are specifically mentioned in Rule 11 as the officers to whom the subordinate officers in immediate charge should report all breaches

× Published with Govt of India Notification No. 4 F. dated 19th Febry 1869 and printed P.P. 134 et seq of the Compilation of Revenue Acts.
+ Principal orders in force in Gujrat.

breaches of the Forest Rules.
Such being the position of all
Revenue Officers generally and
of the Amildars in particular
as regards the District forests,
it is clear that there can be no
doubt that they are entrusted
with them. All trees standing
on Government unoccupied
land belongs to the "District Forest"
under the definition of that term
as given both in the Rules of
1869 and 1878, and therefore there
is not much room for doubt
as to the fact of the accused
having been entrusted with those
particular trees he is proved
to have felled and removed.—
Under this view of the case I
would submit that the accused
should have been convicted not
of simple Theft, but of the
much graver offence of Criminal
breach of Trust by a Public
Servant (Section 409 Indian Penal
Code) and sentenced accordingly.—
9.— Even granting that a
conviction under section 409
Indian Penal Code cannot be
sustained

sustained, Still it is quite clear that upon the facts found by the Judge, there should have been a conviction for Theft by a Servant under Section 381 Indian Penal Code, because the possession of the Shekdar under Section 11 of the Forest Rules of 1869 is the possession of Government under Section 27 I. P. C. and the accused as a Servant of Government is guilty not merely of simple Theft under Section 379 Indian Penal Code, but of the much graver offence under Sec. 381 Indian Penal Code, and should have been convicted and punished accordingly.—

10.— In case of a conviction under Section 409 or 381 being secured before the Judicial Commissioner in Criminal case No. 22, it would follow that that Court should pass some sentence of imprisonment however small, and that sentence might perhaps be something adequate seeing that there are no

mitigating

mitigating Circumstances of any kind.
11. I would recommend therefore
that the Chief Commissioner may
direct an application being made
to the Judicial Commissioner in
Criminal Case No. 22, praying for
the exercise by that Court of its
Powers of Revision under Section
297 Criminal Procedure Code
and for the conviction of the accused
under either Section 409 or 381 Indian
Penal Code and for a proper and
adequate sentence upon such
conviction. — I make this recom-
mendation because a sentence
of fine only is no adequate
punishment to a person in the
position of the accused who
has been able to pay the large
fine on the same day that it
was imposed and who I have no
doubt would have paid a much
larger fine without much difficulty.
The punishment can moreover have
no deterrent effect upon others. —
The action of the Government above
recommended is in my opinion
necessary

necessary both for the protection of Government proprietory rights and for the ends of public Justice.

12.— The second recommendation I would make refers to the Session Judge's order* of 5th Sept. 1874 suspending the enquiry into the six remaining charges.— This order was passed under Section 459 of the Criminal Procedure Code.— It is not clear what its effect would be.— If the Public Prosecutor had withdrawn the charges, such withdrawal would operate as an acquittal under Section 61 of the Criminal Procedure Code, but the Code is silent as to the effect of the Judge's order to "suspend the Enquiry".— The meaning of the words used do not show that the order can put a final stop to all further Proceedings.— But it is clear that the Judge understood that the order should operate as an acquittal, for he not only released unconditionally the accused, till then under custody as an under trial Prisoner, but also intimated

*Enclosure No. 6.

intimated in court his intention not to try the remaining charges unless the Judicial Commissioner should hold that "suspending Enquiry" meant merely "postponing the trial"

13.— Some at least of the remaining charges can in my opinion be fully brought home to the accused, and they are much graver than the charges already tried.— They relate to the misappropriation and misapplication of public money entrusted to the accused for the relief of the starving poor during the late famine and are in my opinion such as should not be passed over without enquiry.— One of these charges relate to a quantity of 700 odd seers of rice which has been misappropriated.— In connection with this misappropriation, a Ealook Goomasta Narsinga Row, an accomplice of the accused has been convicted and sentenced to 1½ years rigorous imprisonment.— If after this the accused is not to be tried on any of

4/

of the Famine Fund and appropriation charges, the effect upon the public mind can easily be conceived.— I do not say that the identical charge of which Karasinga Row was convicted can be sustained against the accused, though it is one of the six remaining charges, but there are at least two or three others of a similar nature which can all be brought home I think to the accused.— In the absence of the accounts and of the original Vouchers which are in the Sessions Court, I am now unable to give full particulars of these charges.— But I would refer specially to one of them which is more glaring than the others.— It is the subject of the 11th Count of the charge framed at the Prilimnary enquiry, and is referred to in paras 43 to 46 of Enclosure No. 1 to this report.—

14.— Under these circumstances I would recommend that the Local

Local Government may under section 272 of the Criminal Procedure code direct an appeal being referred to the Judicial Commissioner against the Sessions Judge's order suspending enquiry into the remaining 6 charges viewing this order as an acquittal, a light in which the Judge has already viewed it.—

15.— If however the Jud. Comr. should pass some adequate sentence in case No. 22, upon the application proposed above in para 11, (6 months perhaps be unnecessary to press the appeal as regards the six remaining charges or the Public Prosecutor can be instructed formally to withdraw them.— But with the present sentence of a suitable fine it would perhaps not be wise to abandon them altogether, and hence I recommend an appeal under section 272 Criminal Procedure code.—

16.— The third and last recommendation I would make is for the

the appointment of a Competent
advocate to make and conduct
the applications on behalf of
Government referred to in paras
11 and 15 above and also to support
the conviction in case No. 22 cs
should the accused appeal against
it. I am informed that he is about
to prefer such an appeal and
I would therefore solicit the
orders of the Chief Commissioner
upon the subject in sufficient
time to enable the advocate
appointed to receive proper and
full instructions. — I ask for
the services of a special advocate
because under the Judicial
Commissioner's† ruling in Crimi-
nal Appeal case No. 49 of 1879. —
Mr. Madhava Row who has con-
ducted the case in the original
Court, would be unable to ap-
pear before the Judl. Commis-
sioner, and because I consider
that Mr. Linitte cannot do full justice
to the case if it is entrusted to
him. — In Chief Commissioner's
Proceedings No. 3336/2 dated 18th July
1879

† Vide last Para. of Enclosure No. 2.

& Copy enclosed for convenience of reference Enclosure No. 7.

1879 para 4, I was called upon to report the circumstances which led me to appoint Mr. Gadhawe Row to conduct the prosecution and thereby to supersede Mr. Smith Public Prosecutor. — I beg to enclose a Memorandum* drawn up by me which contains a Statement of the information and circumstances under which I acted in the matter. —

17. — I beg that the enclosures to this letter except Enclosure No. 8 may be returned to me when no longer required, as I would like to have them for the purpose of instructing any advocate who may be retained. —

I have the honor to be,

Sir,

Your most obedient Servant

K. Seshadri Iyer

Dy. Commissioner

& District Magistrate

* Confidential Memorandum Enclosure No. 8.

1/F-64 47

To
The Commr Lunatics

8/11th Sept 1879.

Ct: 2
1879
47

Issued by order of this Court from Melbourne 17/9/79

No 4840/81 ✓

Comp No 18. ✓

Decree orders regarding the retention of a special advocate for the purpose of conducting the appeal cases Nos: 22 & 24 on the file of the Mandidtong Sessions Judges Court.

Title Page: [illegible]

76

Proceedings of the C.C. of Mysore

Read

Report upon sessions cases
Nos 22 & 27. of the Nandidrug
S. Division received in letter
No 99 d 11 Sept: from Dy Com
Tumkur

Order No 18 of Comm Mysore 17-9-79

The Dy Comr. of Tumkur
may retain and instruct
a special advocate for
the purpose of conducting
the appeal and other cases
in the J Cs court arising
out of those sessions cases
which are above quoted

In the event of an
appeal being preferred
against the conviction in Sessns
Case No. 22 the special
advocate is will uphold the
conviction, and then, or
if no appeal is preferred,
by motion under Sec 297 Cr.
P. C for revision he will be
instructed to move the Ct to
amend the conviction ~~sentence~~ to one falling under
S 409 I.P.C & to pass an adequate

quate sentence.

3. If the J.C. should not modify ~~the order~~ and enhance the sentence passed in case No. 22. application shld also be made for an order ~~for~~ reversing the Sessions judge's order suspending enquiry into the remaining charges against Thirumalachary and directing him to try the same or such of them as are not withdrawn by the prosecution.

17/9

H. Mudaliar with enclosures Nos 1 to 7 of his letter.

Encl.

Tumkur District
D.y. Commissioner's office
Tumkur, 24th September 1879

No. 116.

To,

The Secretary to the Chief
Commissioner of Mysore.
General department.

Sir,

I have the honor to report that Mr. Lespe Smith Public Prosecutor of the Kundy droog division sent me, with his docket dated 16th September 1879, the written explanation called for in Chief Commissioner's Proceedings Canc. No. 11 dated Mysore 5th September 1879. This explanation refers to Mr. Smith's action throughout in the Criminal case Govinna D.S. Timmalachary and the nature of some of the statements made are such that it is necessary that I should comment upon them at some length, in order to place the whole matter before the Chief Commissioner in its true light. I have accordingly embodied my observations in the accompanying memo: quoting in it the whole of Mr. Smith's letter for convenience of reference.

2. Regarding the particular charges which I wished to be tried and the grounds for their retention I have already submitted a report to the Chief Commissioner in my letter No. 99 dated 11th September 1879, and further information on the same subject is also contained in the memo: above referred to, which together with Mr. L. Smith's explanation in original, is herewith submitted for the order of the Chief Commissioner.

I have the honor to be,
Sir,
Your most obedient servant.
Krishnaiah
D.y. Commissioner.

K.B.L.

A2956

1879

From The Dy Commissioner
Trichinopoly district.

Secretary to Chief Commissioner,
General Department.

Dated 24th September 1879.

Despatched

Received 30

Enclosures No. 9.

General No. 116 } 1879-80.
No.

Forwards Mr Nepean Smith's explanation, with his (the D.C.'s) comments thereon, regarding his action in the case of Govt ~~act~~ Tirumalachariar.

Former references

WJ
28/9

J-64

The public prosecutor required by order No 11 of 5 Septr to explain the grounds on which he had withdrawn charges

Mr Sandford has sent the C.C. a memo on the explanation & he considers it satisfactory. As far as appears in official correspondence therefore we cannot accept his explanation & say that he acted within his rights - Mr Sandford's opinion is confined entirely to the one question of withdrawal: but there is another matter a confidential memo by Mr Sheshadri Iyer (not in the file) which the Chief Court has & which deals with the question of Mr Smith's general fitness for the post. Neither Mr Sandford has not offered an opinion - but I suspect he has one

Mr Gordon desires me to let you see this correspondence while he was away & he would like your opinion on it & what should be done

17/1 WJ

To

The Secretary to the Chief Commissioner

Mysore & Coorg

From

Nugent Smith

Public Prosecutor

Nundydroog Division

Sir

Having received from the Dt. Magistrate of Tumkur a copy of his letter to your address No 86 of 19 dated 3rd inst I now have the honor to forward the explanation required in your letter of the 5th

2 I would beg to state in the first instance that the Dt. Magistrates letter is calculated to mislead. He says "At the last Tumkur Sessions Mr. V. Mahadawa Row & Mr. N. Smith Public Prosecutor were in joint charge of the prosecution in the said case" This was only nominally but not actually so. The records of the case had only been received during the sitting of Sessions and I had no opportunity of making myself master of them. The Dt. Magistrate consequently wrote me that under the circumstances he wished me to allow Mr. Mahadawa Row to assist me. To this I had not the slightest objection, & his aid was simply to give me information. The letter reached me late on a Sunday evening. Before I could reply next morning, I was given to understand that the Dt. Magistrate had passed an order empowering Mr. Mahdawa Row not to aid me but to conduct the case. As both the Sessions Judge & myself were under the impression at the time that Sect 202 of the Cr. Pro. Code under which the order was passed did not apply to Public Prosecutors, I objected to the arrangement

or to be summarily superceded. It was at last agreed that I should not be accepted, but that I should nominally conduct the prosecution, but on account of my ignorance of the case that he should actually do so, whilst I should take up such legal points as occurred. I may also state that as most of the witnesses examined on the first three charges had been broken down by me in the case of Goondapah V. Tumralackary, I had condemned myself of their untruthfulness & this was one of the reasons, which prompted the D. Magistrate, in the first instance to wish Mr. Mahadawa Row to appear vide letter No 2 from which it will also appear clear that the D. Magistrate did not contemplate a joint prosecution but my total withdrawal from the prosecution, but as I declined to withdraw, the arrangement was made as above

After my return from Tumkur to Banga- 3
lore I very unexpectedly but accidentally heard that the D. Magistrate had written to the Judl Commissioner, making some charges against me, for charges they virtually appear to be, which when subsequently placed before the Chief Commissioner resulted in the order No $\frac{3536}{2}$ of 18 July, but up to the present moment I have received no exact information of what called forth the 2nd para of that order, as no such question was raised by me, nor any information afforded me by the D. Magistrate as to any such question having arisen.

Immediately on receiving the above order 4
I wrote to the D. Magistrate requesting him to instruct me as to how he wished to conduct the conduct of the prosecution or the remaining charges, in order that I were myself might

study the proceedings. Receiving no reply, I again wrote on the 10th August and received an answer to the effect that he wished the old arrangement to continue. On the 22nd August I again wrote pointing out that a divided responsibility would be unadvisable; that the entire responsibility should rest on one person alone and I wound up by saying that "Should the case be under my conduct, I should of course be glad to avail myself of Mr Maharaja Row's aid, but that the entire responsibility, as to the evidence I exhibit to be adduced at the trial, would have to remain with me"

5 To explain the last para, I have only to refer to Mr Sandford's judgment in Ellum's case on appeal, wherein the conduct of the prosecutions are recorded upon. Of course I shall refer to this, as my name appeared on the record, tho' actually I had taken no part in the trial, as to choice of witnesses, exhibits &c. The para alluded runs as follows

6 "I wish to say that in my opinion much unnecessary evidence both documentary & oral has been introduced into this record. The details of the contractor Ferrappa and the licenses & petitions relating to trees other those, which are the subject of the charges are very remotely & not all connected with the question at issue and the trial was unnecessarily prolonged by the introduction of such matters. I also think that the persons who advised the prosecution, should have satisfied themselves before instituting that no reasonable doubt could be raised, or that if raised, it would at once be set at rest as to

property or the Knives, which are the subject of the charges. When the principal witness on behalf of the prosecution claimed the Knives as his own, it might have been foreseen that a fatal objection to the conviction of the accused would probably arise"

I may continue to assert that had I actually conducted the prosecution, no such irrelevant matter would have been introduced on the grounds of calling a hostile witness for the Sole

I received no reply to my letter of the 22nd August but I reached Trincomalee, when the Dt Magistrate wrote me a demi-official stating that he wished to see me as he hoped that a minute's conversation would enable us better to arrive at a satisfactory arrangement."

I accordingly waited on the Dt Magistrate and stated to him the conversation which ensued, he admitted the difficulties of the case, also that at least four of the charges viz 5th 6th 7th & 8th could hardly be sustained & that the 6th charge was of too vague a nature. I told him that even on the facts as disclosed in evidence on the 5th 6th 7th & 8th charges, no conviction could ensue, but he asked me to consult with Mr Mahadewa Row. I did so & my conviction is that Mr Mahadewa Row did not at all wish that I should press on the prosecution. I have seen Mr Mahadewa Rows memo of what he says took place at the conversation which is in a measure correct, but I did not positively assert that I would withdraw charges 5 to 8 but that I was convinced that no conviction

could be obtained or there and the result of the
5th charge proves I was right & I have no doubt
that if sued No 6 would follow suit. I do not mean
to say that the charges are false but there is no legal
proof on the record. Mr Mahdava Rao admits
that I said, that if left to myself I should not put
forward certain evidence in regard to certain
charges, which he considered absolutely necessary
so that if the prosecutor had been a pontroc
much clashing would have occurred. I may
also add that Mr Mahdava Rao admitted that
the 7th & 8th charges could not be sustained. He
states that I told the Sepoy Court that "I did not
like to show the responsibility (whatever that
may mean)" but in reply to this sarcasm, I
simply reply that I did not wish to lay myself
open to animadversion in case of appeal
as to outward evidence & exhibits.

I may now quote from the D. Magis-
trates abstract of grounds of committal to
show how unfair a man is treated for divorce
of opinion as to the conduct of the prosecu-
tion vide para 3

"I am pressed to the consideration of the
great mass of evidence adduced for the prosecu-
tion, as a large part of it must not be strictly re-
levant to the charges actually framed against
the accused, as in an enquiry, which was
suddenly begun without a thoroughly ma-
tured plan, I had to examine a large num-
ber of witnesses, and to hear any & all able to
give evidence for the prosecution and owing to
the desire of the accused to cross-
examination of most of the witnesses, I

have with a view to arrive at the truth examined some persons, who are materially witnesses for the defence and considered some documents, which are exhibits upon which the accused relies"

The discretion vested with the Pte Prosecutor as he receives no specific instructions as to which witness to examine, to put into the witness box such men as he thought proper, but when two people differ on the head, the interests of justice must suffer and were had I conducted the prosecution & omitted any witness whom Mr Mahdava Row wished to examine I might have put myself in the determination of being found fault with either by the Judicial Comr or D. Magistrate.

I would beg to point out for the consideration of the Chief Commissioner that I never construed his order in para 3 of No $\frac{3336}{2}$ of 18th July as indicating his opinion that the actual Public Prosecutor should take a subordinate part in a Sessions trial, for as the D. Magistrate admits, he did order Mr Mahdava Row to conduct the case, that would have been my position; but as authorizing the D. Magistrate to exclude me altogether, although I am quite unaware what are the special grounds, on which he took on himself to oust me in favor of Mr Mahdava Row which he does not appear to have recorded & reported for approval, as directed in para 4 of order No $\frac{3336}{2}$ of 18 July. By his own admission he just ordered Mr Mahdava Row to conduct the case & then made it appear as if my withdrawal, which was the consequence of his own order, had been the cause of appointing Mr Mahdava Row, though I must have

shew that a good prosecution was all but impossible

I would very respectfully beg to say that any Advocate in a private case would lay himself open to censure, who by any Court, contrary to my instructions from such Client should endeavour to obtain or endeavoured to put in inadmissible evidence, or in case of his putting in what he knew or had reason to believe was false evidence. In any case an Advocate either in public or private practice is only bound to use his best diligence to obtain a conviction by putting before the Court only such evidence as is to the point & in no other manner occasion the Just Committing has ruled that an Advocate is responsible for any improper pleading in spite of the client's instructions to that effect.

I would further beg to be permitted to add that after a Committing Magistrate is led to believe that a primâ facie case has been made out, arriving at such conclusion by receiving as evidence a confession improperly recorded or made to a police officer or on hearsay or other evidence which was inadmissible, which eliminated from the record by the Advocate conducting the prosecution he has no sustainable case & when this is so, it is but waste of time to go through such a case.

It is true that the J.P. Magistrate in his letter says that certain charges should not be withdrawn but it is also equally true that he admitted they could not be sustained. Mr Matthew Rowe's memo will bear me out in shewing that the grounds of dismissal did not relate to withdrawal of charges but to the actual conduct of the case and the manner in which it was to be sustained.

With regard to the charges I declare as my opinion in law unsustainable, the 5th charge has already failed. The 6th is of like nature but not worn so strong as the 5th. 15

The 7th & 8th charges relate to a breach of trust, alleged to have been committed by accused in paying cartmen carriage money from the Jammu Fund, small sums of Rs 12 & 4 for conveying certain timber from the accused's house at Kompthul to Bangalow & thence burning ice to Kompthul but though no doubt the cartmen were cheated as the accused paid them nothing for the timber hire, yet as the amounts were due them for the ice hire, no criminal charge could lay. The 1st Magistrate says "that it is very likely the money was paid to accused" but on a criminal charge, "very likely" does not amount to proof. 16

The 9th charge relates to an alleged breach of trust as to the Jammi funds Leo to the effect that between July & October 87 the accused under the colour of a criminal contract to Kencappa made payments on to him of various sums of money over & above what he was justly entitled to. This charge was admitted by the 1st Magistrate to be very vague and I drew up a fresh charge on this head. The whole of this charge was under the assumption that Kencappa was only a nominal contractor, a fact which is not & cannot be proved but might perhaps be inferred. That money was misappropriated, there can be no doubt, but I shaped the charge so as to be of a specific nature & this new charge was approved of. 17

Charge No 10 could hardly be brought home to the accused. He was not entrusted with the 18

9

(7)

vice, nor was he actually in charge of it. The embezzlement took place apparently in the Collectorate (Farming) & one of the Firm as that has already been tried & convicted with regard to it.

19 As to charge No 11 Mr Mahdava Row told me he could make nothing out of it, nor could Government.

20 I trust that the Chief Commissioner will confirm my explanation of opinion that I have not wilfully violated any orders & that the action taken by me was for the best interests of justice & prompted rather by a desire of carrying out his orders than of disobeying them.

I have the honor to be
Sir.
Your most obed Sv
Rupert Smith
Ag Prosecutor
Kurnool Dy Dist.

To

W. J. Cunningham Esqr
Gnl Sect to Chief Comm
Mysore

From N Pearce Smith
Pl Prosecutor
Bundy Dvoy &c

Sir

I have the honor to acknowledge receipt of copy of the Jr Magistrate's letter previous to which that officer had been good enough to furnish me with one also a memorandum by Mr Mahdava Rao

In my former letter I had the honor to report that the accused Immadoorary had been convicted on the 1st Charge, acquitted on the 5th & that the other charges had been dismissed by the Sessions Judge -

I have the honor to request that in order to keep me au fait with the orders of Govt I may be furnished with copies of the Mysore Gazette and also that all bona fide letters from my office may be passed free by the mail by post dept

I have the honor to be
Sir
Your most obed Svt
N Pearce Smith
Public Prosecutor
Bundy Dvoy &c

Bangalore
16 Sept 1879

No 1)

MYSORE COMMISSION

Tumkur
8th June 1792

Dear Sir,

I returned from Chickanaya Kanhalli this afternoon – I hear you have had an unusually heavy Sessions this time and that in Consequence of that & of the Shortness of the notice, you have not been able to Study amidst Financial Cares – and Especially to look into the numerous accounts & other Exhibits which are all

No 2

MYSORE COMMISSION

Sunkeri
9th June 187

Dear Sir,

I believe that my letter to you of last night would show that no share Cast upon you, and that I appointed Mr Madhava Rao for certain public reasons, Convenience. If you produce that letter before the Court of Inquiry and withdraw from the Case, the public will fully understand why you don't prosecute the Case - I wrote that letter because

MYSORE GOVERNMENT

s — as now I am — hes-
ling to cause you any
ther pain. I should
Very sorry indeed that
= Sd. be any difference
seen us, which will be
y unnecessarily having regard
ur relative Official positions &
ties. But I am quite
tisfied that my order under
102 is perfectly legal
will appear from a
usal of S. 235 and the
ctions relating to the

Duties of Public Prosecutors,
Govt Pleaders, &c.

I think the question of
supersession is not at issue
And as you have raised the
question I might as well
say, that the Case under
reference is one which you
might fairly have asked
me to relieve you, owing
to your previous Connection
in Govindappa's case as P.
Prosecutor.

If in spite of all this Ex-
planation you still think

it necessary to dispute my
order appointing Mr Meadhaven
Rec. I can only leave it to the
Supreme Court & to the full
Court to decide whether
the appointment is legal -
If their decision is agt me
I would in that case be
bound to submit to the
Local Govt and apply for
its orders for the appointment
of a Special Prosecutor for the
Case - I am very averse to do
this, & I hope my duty will not
Compel me to do it -

Memorandum.

Wm Stephen Smith's letter.

To
The Secretary to the Chief
Commissioner of
Mysore & Coorg.

From,
Stephen Smith
Public Prosecutor
Kundydroog division.

Sir,

1.— Having received from the District Magistrate of Tumkur, a copy of his letter to your address No. 86 of 1879 dated 3rd Instant, I now have the honor to forward the explanation, required in your letter of the 5th.—

2.— I would beg to state in limine that the District Magistrate's letter is calculated to mislead. He says "At the last Tumkur Sessions Wm V. Madhava Row and Wm S. Smith, Public Prosecutor, were in joint charge of the prosecution in the said case".— This was only nominally so, but not actually so.—

The

Remarks of the District Magistrate of Tumkur on the statements made in the letter marginally quoted in full from Wm Stephen Smith to the Secretary to the Chief Commissioner regarding the Prosecution in Criminal Case Government-vs- Timmalacharry.—

The expression I used "joint charge of the prosecution" conveyed the actual facts as Wm Smith himself virtually admits further on, and "calculated to mislead" is therefore rather strong language to use.—

H.S.

The records of the case had only been received during the sitting of Sessions and I had no opportunity of making myself master of them. The District Magistrate consequently wrote me that under the circumstances he wished me to allow Rv Madhava Row to assist me. — To this I had not the slightest objection, if his aid was simply to give me information. This letter, reached me late on a Sunday evening. — Before I could reply next morning, I was given to understand that the District Magistrate had issued an order empowering Rv Madhava Row not to aid me but to conduct the

The records were received at Bangalore a few days before the Sessions when I got the Sessions Judge and Public Prosecutor were at Bangalore. — K.S.

Rv Smith never admitted to me that he had no time to master the case. (Vide his first D.O. letter to me herein enclosed marked A 07 9th June 1879 in reply to my D.O. letter of 8th June 1879 which is Enclosure No. 1 to his present letter.) K.S.

I did not desire that Rv V. P. Madhava Row should merely "assist," but that he should be in exclusive charge (Vide my D.O. which Rv Smith now submits as enclosure No. 1 to his letter to Secretary.) K.S.

*Enc: No. 1. Rv Smith who received and read my letter on Sunday evening, could have sent me a line in reply then and there, but he did not do so but told my peon to go back the next morning for a reply. This as well as the information I had received and the fact that there was no time to lose the trial being fixed for the next day induced me to decide not to wait for Rv Smith's reply, and I at once wrote and told the Session Judge of Rv V. P. Madhava Row's appointment. This was done on the night of Sunday the 8th June, and I meant that such appointment should be in supersession of Rv Smith. The grounds for such supersession are fully reported to Chief Commr in para 16 of my letter to Secretary No. 99 of 11th Sept. 1879. K.S.

the case.— As both the Sessions Judge and myself were under the impression at the time that Section 202 of the Criminal Procedure Code under which the order was passed did not apply to Public Prosecutors, I objected to this arrangement or to be summarily superseded.— It was at last agreed that I should not be ousted, but that I should nominally conduct the prosecution, but on account of my ignorance of the case that he should actually do so, whilst I should take up such legal points as occurred.— I may also

The Sessions Judge certainly did not think so. Vide his letter to me of 9th June 1879. (Enclosure B.), wherein he reserves the question of the legality of Mr. V. P. Madhava Row's decision mooted by Mr. Smith for decision in Court.—

Vs.

This does not represent the whole of what took place although it shows that Mr. Smith himself admits that the final arrangement come to was to place him and Mr. V. P. Madhava Row in joint charge of the prosecution, for whether Mr. Smith confined himself to clearing legal obstacles or engaged also in the actual examination of witnesses that was merely a matter of arrangement. It is true that I was anxious to place Mr. V. P. Madhava Row in actual charge, and did virtually do so, but not before Mr. Smith met me in the office and personally assured me that he had no "conscientious scruples whatever on account of his private convictions acquired when prosecuting Goondabbe, and that he only wanted not to be superseded and if allowed to remain in it, he would merely sit by and leave

also state that as most of the witnesses examined in the first three charges had been broken down by me in the case of Goondapa & Tirumalachary, I had convinced myself of their untruthfulness and this was one of the reasons, which prompted the district Magistrate in the first instance to wish Mr. Madhava Row to appear, vide letter No. 2, from which it will also appear clear that the district Magistrate did not contemplate a joint prosecution but my total withdrawal from case the real management in Mr. V. P. Madhava Row's hands I did not wish to inflict upon Mr. Smith needlessly the pain of supersession, and accordingly assented to the arrangement he proposed. —

This arrangement was come to on the 9th June after the case had been called. In fact in order to enable Mr. V. P. Madhava Row and Mr. Smith to come to it, the Sessions Judge adjourned for a few minutes and sent both of them to me. The written correspondence had all previously taken place in the order of time mentioned below.

1st My letter to Mr. Smith of 8th June } (Enc: 1.)
2nd Mr. Smith's letter to me of 9th June. } (A.).
3rd The Session Judge's letter to me of 9th June. — } (B.).
4th My letter to Mr. Smith of 9th June } (Enc: 2).
& 5th Mr. Smith's reply to me of 9th June } (C.).

When the arrangement for Mr. Madhava Row's actual charge and Mr. Smith's nominal charge was made, I further intimated to Mr. Smith that I would nevertheless write generally to Judicial Commissioner about my powers under Section 202 and obtain a ruling upon the subject. —

V.G.

2/

from the prosecution, but as I declined to withdraw, the arrangement was made as above. —

3. — After my return from Tinnevelly to Bangalore, I very unexpectedly but accidentally heard that the District Magistrate had written to the Jud[l] Commissioner making some charges against me, for charges they virtually appear to be, which when subsequently placed before the Chief Commissioner resulted in the order No. $\frac{3336}{2}$ of 18th July, but up to the present moment I have received no exact intimation

12

Mr Smith refers to my letter to the Judicial Commissioner No. 259 dated 3rd July 1879, which upon submission by the Jud[l] Commissioner the orders contained in Chief Commissioner's Proceedings No. $\frac{3336}{2}$ dated 18th July 1879 were passed. My letter referred to in part to a case (other than the one in question) which Mr Smith had desired to withdraw. In the latter part of that letter I solicited a ruling for my future guidance as to my powers under Section 202. I did not there quote the case of Government ~~vs~~ Tirumalai Narry, because owing to the arrangement of joint prosecution such a ruling was not then required as to that particular case. —

V.S.

intimation of what called for the 2d para of that order, as no such question was raised by me, nor any information afforded me by the District Magistrate as to any such question having arisen.—

4.— Immediately on receiving the above order, I wrote to the District Magistrate requesting him to instruct me as to whom he wished to entrust the conduct of the prosecution on the remaining charges, in order that if it were myself I must study the proceedings.— Receiving no reply, I again wrote on the 10th August and received an answer to the effect that he wished the old arrangement to continue.

What called for the 2d para of the Chief Commissioner's order was Mr Smith's very objectionable procedure in Sessions Case No. 19 of 1879 Govt. of Shekdar Bhyarappa and another, and in reporting about that case, I submitted the entire record which fully bore out all I said in my letter No. 257 dated 5th July 1879 already quoted.—

Yrs.

continue.— On the 22nd August I again wrote pointing out that a divided responsibility would be unadvisable; that the entire responsibility should rest on one person alone and I wound up by saying that "Should the case be under my conduct, I should of course be glad to avail myself of Rw Madhava Row's aid, but that the entire responsibility as to the evidence and exhibits to be adduced at the trial, would have to remain with me".

5.— To explain this last para, I have only to refer to Rw Sandford's Judgement as Judicial Commissioner in appeal, wherein the conduct of the prosecution is animadverted upon and Rw Smith might well have been content to share the "animadversions" along with the Government and its responsible officers, not to say the Court of

and of course I share in this, as my name appeared on the record, though actually I had taken no part in the trial, as to choice of witnesses, exhibits &c. &c. — The para alluded to runs as follows. —

6. — " I wish to say that in my opinion much irrelevant evidence both documentary and oral has been introduced into this record. — The Status of the Contractor Vencatha and the licenses and petitions relating to trees other than those, which are the subject of the charges are very remotely if at all connected with the question at issue and the trial was unnecessarily prolonged by the introduction of such matters. — I also think that

of session which allowed this irrelevant evidence. But the fact is that the Judicial Commissioner does not intimate a distinct opinion on the question of "relevancy" and while upon this subject — I would beg respectfully to refer to the peculiar disadvantages under which the Prosecution labored in the hearing of this appeal before the Judicial Commissioners Court. — At any rate but Smith who in para 2 above says that his special function in the case was "to take up such legal points as occurred" might have striven to shew that the "Status of Vencatha," "the licenses and petitions" for removal of trees &c were all relevant under sections 6 to 11 and sections 15 and 114 of the Evidence act. —

V.S.

that the persons who advised the prosecution, should have satisfied themselves before it's institution that no reasonable doubt could be raised, or that if raised, it would at once be set at rest as to the property in the trees, which are the subject of the charges. — When the principal witness on behalf of the prosecution claimed the trees as his own, it might have been foreseen that a fatal objection to the conviction of the accused would probably arise. —

7. — I may venture to assert — that had I actually conducted the prosecution, no such irrelevant matter would have been introduced nor the gross error of citing a hostile witness for the Government. —

Mr. Smith approved of this "gross error" at the time, but after the Judge Commissioner's Judgment read it as an argument. —

Vs.

57

I received no reply to my letter of the 22nd August - till I reached Lucknow, when the District Magistrate wrote a demi official stating that he wished to see me "as he hoped that a Minute's conversation would enable us better to arrive at a Satisfactory arrangement". — 8. — I accordingly waited on the District Magistrate and in the Conversation which ensued, he admitted the difficulties of the case, also that at least four of the charges viz! 5th, 6th, 7th and 8th could hardly be sustained and that the 9th charge was of a too vague a nature. — I told him that I said that the 6th, 7th, and 8th charges were weaker than the others and as regards the 9th charge that it was too general and should be broken up into some minor charges so as to confine ourselves to particulars

4/-

60

add that Mr. Madhava Row admitted that the 7th and 8th charges could not be sustained. He states that I told the Sessions Court that "I did not like to share the responsibility" (whatever that may mean) but in reply to this sarcasm, I simply replied that I did not wish to lay myself open to Animadversion in case of appeal as to irrelevant evidence and exhibits.—

9.— I may here quote from the District Magistrates abstract of grounds of Committal to show how wide a margin existed for difference of opinion as to the conduct of the prosecution vide para 3.—

10.— "I now proceed to the consideration of the great mass of evidence adduced for the prosecution, a small part of it might not be strictly relevant to the charges actually framed against the accused, as in an enquiry, which was so suddenly begun without a thoroughly matured plan, I had to examine a large number of witnesses, said to be in any way able to give evidence for the prosecution and owing to the desire of the accused to reserve the cross examination of most of the witnesses, I have with a view to arrive at the truth

examined

examined some persons, who are in reality witnesses for the defence and con-sidered some documents which are exhibits upon which the accused relied.—

11.— The discretion vested with the Public Prosecutor, as he receives no specific instructions as to which witness to examine, to put into the witness box such men as he thought proper, but when two people differ on this head, the interests of justice must suffer and even had I conducted the prosecution and omitted any witness whom Mr. Madhava Row wished to examine I might have put myself in the dilemma of being found fault with either by the Judge Commissioner or District Magistrate

But when the Public Prosecutor receives in special cases, specific instructions, he is I submit bound by them.—

K.S.

Magistrate. —

I would beg to point out for the consideration of the Chief Commissioner that I never construed his order in para 3 of No. 3336/2 of 18th July, as indicating his opinion that the actual Public Prosecutor should take a subordinate part in a Sessions trial, — for, as the District Magistrate admits, he did order Mr. Madhava Row to conduct the case, that would have been my position, — but as authorizing the District District Magistrate to exclude me altogether; although I am quite unaware what are the special grounds, on which he took on himself to oust me in favor of Mr. Madhava Row, which he does not appear to

to have recorded and reported for approval, as adverted in para 4 of the order Nos. 3336/2 of 18th July.— By his own admission he first ordered Mr. Madhava Row to conduct the case and then made it appear as if my withdrawal, which the consequence of his own order, had been the cause of appointing Mr. Madhava Row, though I trust I have shewn that a joint prosecution was all but impossible.

12.— I would very respectfully urge that any ex Advocate in a private case would lay himself to censure, who before any Court even acting under instructions from his client filed irrelevant exhibits or endeavoured

to

E 9

Mr. Smith has no right to know the grounds upon which I acted in exercise of a discretion vested in me by law. I have already, in my reported reasons to the Chief Commr. in para 16 of my letter No. 99 Dy 11th Sept. 1879 to the Secretary.—

V.S.

to put in inadmissible evidence or worse if he put in what he knew or had reason to believe was false evidence. In any case an advocate either in public or private practice is only bound to use his best diligence to obtain conviction by putting before the Court only such evidence as is to the point and on more than one occasion the Judl. Commissioner has ruled that an advocate is responsible for any improper pleading in spite of the clients instructions to that effect.—

13.— I would further beg to be permitted to add that often a committing Magistrate is led

In using the expression "false evidence" Mr. Smith probably refers to his own opinion. In the latter part of para 2 above, he speaks of his own opinion as to the "untruthfulness" of the evidence of the witnesses for prosecution.—

K.S.

I am unable to understand this. It may be an advantage if Mr. Smith could quote the rulings he refers to.—

K.S.

lies to believe that a prima facie case has been made out, arriving at such conclusion by receiving as evidence a confession improperly recorded or made to a Police Officer or on hear-say or other evidence which was inadmissible, which eliminated from the record by the advocate con-ducting the prosecution, leaves no sustainable case and when this is so, it is but waste of time to go through such a case.—

14.— It is true that the District Magistrate in his letter says that certain charges should not be with-drawn, but it is also equally true that he admitted they could not be sustained. Dr. Madhava

I admit—this and more as within the discretion of a Public Prosecutor. But Dr. Smith has always shown a fondness for excluding really legal and relevant evidence on account of his own crude notions of their untruthfulness. I have noticed this failing in other cases, one notable instance of it being the case of Government Vs. Shekdar Bhyarappa and another which has already been before the Chief Commissioner.

V.S.

I would refer to this memo: itself wherein Dr. Smith did not desire to withdraw some charges.—
(See memo marked D)

Madhava Row's Memo:

67

will bear me out in showing that the point of disagreement did not relate to withdrawal of charges but to the actual conduct of the case and the manner in which it was to be sustained. —

15. — With regard to the charges I declared as my opinion to be unsustainable, the 5th. charge has already failed — the 6th of like nature but not even so strong as the 5th. —

16. — The 7th and 8th charges relate to a breach of trust alleged to have been committed by accused in paying certain cartmen money from the famine fund, and Small sums of Rs: 12 and 9 for conveying certain timber

The Sessions Judge's judgment of acquittal as regards the 5th charge is the best proof I can give why the Prosecution was bound to press that charge. —

V.S.

timber from the accused's house at Hunigal to Bangalore and thence bringing rice to Hunigal but though no doubt the cartmen were cheated as the accused paid them nothing for the timber hire, yet as the amounts were due them for the grain hire, no criminal charge would lay.— The district magistrate says "that it is very likely the money was paid to accused" but on a criminal charge, "very likely" does not amount to proof.—

17.— The 9th charge relates to an alleged breach of trust as to the famine funds and is to the effect that between 2nd and October 1877 the accused, under the color of a nominal contract to Venkabba made payments to him of various sums

68

The hire paid from the kitchen fund went to pay that for the journey to Bangalore carrying the accused's timber as well as for the return journey bringing Govt. grain. Was there not in this misappropriation of Government money?

K.S.

It is true "probability" is not "proof" but with other materials of evidence amounts to very strong proof. (See clause 2 section 11 of the Evidence Act).—

K.S.

sums of money over and above what he was justly entitled to. This charge was admitted by the District Magistrate to be very vague and I drew up a fresh charge on this head. — The whole of this charge was under the assumption that Vencappa was only a nominal contractor, a fact which is not — and cannot be proved but might perhaps be inferred. That money was mis appropriated, there can be no doubt, but I shaped the charge so as to be of a specific nature and this new charge was approved of. — 18. — Charge No. 10 — Could hardly be brought home to the accused. He was not entrusted with the rice, nor was he

I did not see the new charge drawn up. But I had instructed Mr. Smith that the charge which was general should be broken up as already stated into several (at least 2) particular charges confined to particular acts. —

V.S.

Is not inference a principal method of proof? —

V.S.

Perhaps Mr. Smith refers to the conversation in which we agreed as to how the charge should be broken up. —

V.S.

The Jud. Commissioner has held that the Goomasta was not entrusted with the rice. Correspondence shewed that the Commissioner sent-

-he actually in charge of it.— The Embezzlement took place apparently in the Rebellion (famine) and one of the Koomastas has already been tried and convicted with regard to it.—

19.— As to the charge No. 11 Dwn Madhava Row told me he could make neither neither head nor tail of it— nor could I understand it.—

20.— I trust that the Chief Commissioner will now from my explanation see upon opinion that I have not wilfully violated any orders and that the action taken by me was for the best interests of Justice and sent the rice to the Amildar with written orders. The Amildar received such orders and the rice. The rice has disappeared. Was there not here a clear case of misappropriation of public property?— V.S.

Dwn V.P. Madhava Row wished to study the accounts and exhibits relating to that charge and would not commit himself to an opinion before he had done so. If the Public Prosecutor finds a case more than ordinarily intricate is that a reason for abandoning it without studying it?— V.S.

Dwn Smith's withdrawal of the case only enabled the accused for the defence to dispute the legality of Dwn V.P. Madhava Row's appointment under Section 202.— Dwn Smith sat by & listened to the speech of the defence Counsel and though the Sessions Judge overruled the objection, I thought it was as well to arm myself with the authority of an-

and prompted rather by a desire of carrying out his orders than of disobeying them.—

I have &c.

/Signed/ Keegan Smith
Public Prosecutor
Lundy drong division.

Vide appointment by the Local Government – Hence my letter No. 86 dated 5th September 1879 to Secretary.

Vishnudas Jha
Dist. Magistrate
of Sumbhur.
24th September 1879.

A 1

Enclosure A
number 2

22

Tirnhis
9 June 1879

Dear Sir

Your note of yesterday was brought to me after I had retired for the night & was therefore unable to reply to it at once.

This morning Mr Thumboo Chetty sent me your order of yesterdays date appointing Mr Baharam to conduct the prosecution in number 202.

I should have been very glad indeed to have availed myself of Mr Baharam's services, but as 202 does not give any Magistrate the right to supersede a Public Prosecutor

many cases no doubt he would be
thought he may do so in case of
a first Pleader. As soon as judge
Pc Prosecutor under the Local
Govt. I cannot there no alter-
native but to dispute your
order, in order that the Jus-
tice may decide on the legality.
I have no wish to create any
trouble, but the post is a detail
on I cannot voluntarily
resile a step on my - I would
for reconsideration I would
let it withdrawn, I do not
I cannot be very glad of
a post more in the subject
case under discussion

Yours obediently
Thos Addison
Dy Asst Comm

Enclosure
Number 13

Vanderbroy Division
District and Sessions Court
Tooraheir 9th June 1879.

To
The District Magistrate,
of Tooraheir.

Sir,

As requested in your letter of yesterday's date, I have the honor to forward herewith* with the rough original of the grounds of Committal in Criminal Case No 18 of 1879, Government vs Sirooma Malakar also the fair Copy of the Charge sheet.

*To be obliged (returned)

2. I have also the honor to transmit herewith a Copy of letter received from the Public Prosecutor and to state that the question therein raised will be decided in Court before the case is taken up for trial.

I have the honor to be,
Sir,
Your Most obedient Servant

W J Wenman Worthy
District & Sessions
Judge

No [illegible]

Public Bungalow
Trincomalee June 9th

To

T. B. A. Thumboo (Vellia) Esquire,
Tesdiour Police
Nuwaraeliya Division

Sir,

I have the honor to bring to your notice, that last night, I received from the District Magistrate a demi Official, asking if I had any objection to his placing an Apothecary (Communipriest) to Conduct the prosecution against Tirovannalachy on the grounds that I had not probably had sufficient time to Study the Case. The letter arrived too late, after I had retired, for me to reply.

I beg to observe that I should have been very glad indeed to have availed myself of the offered aid in Conducting the prosecution, but as the District Magistrate has now written you officially

has under Section 202 appointed
the Madhava Rao to conduct the
prosecution, I must decline being
superseded, as Section 202 does not
Authorize a District Magistrate to take
any Case out of a Public Prosecutor's
hands, though he may do so from a
Government Pleader.

Under these Circumstances should
the District Magistrate will dismiss
order, I shall as aforesaid be glad
to be called to withdraw, but should he
not do so, I have the honor to request
that the point may be referred to the
Judicial Commissioner, especially
as I cannot but consider that the
order of the District Magistrate is
illegal upon me.

I have &c.

(Signed) Rejeam Smith
Public Prosecutor
Mandyam

"Copy"

Chamundoo Chetty
Peishcar &c.

Enclosure marked C.

Tunbridge Wells

9 June 79

Dear Sir

I am sorry that your letter was not duly received sooner, but I was away from home for the last few days & the first post to reach me

I regret much that this should be so, but when you write as if there was about reason why I should not give, the explanation which your duty will compel you & expect of the Local Sec. I cannot now

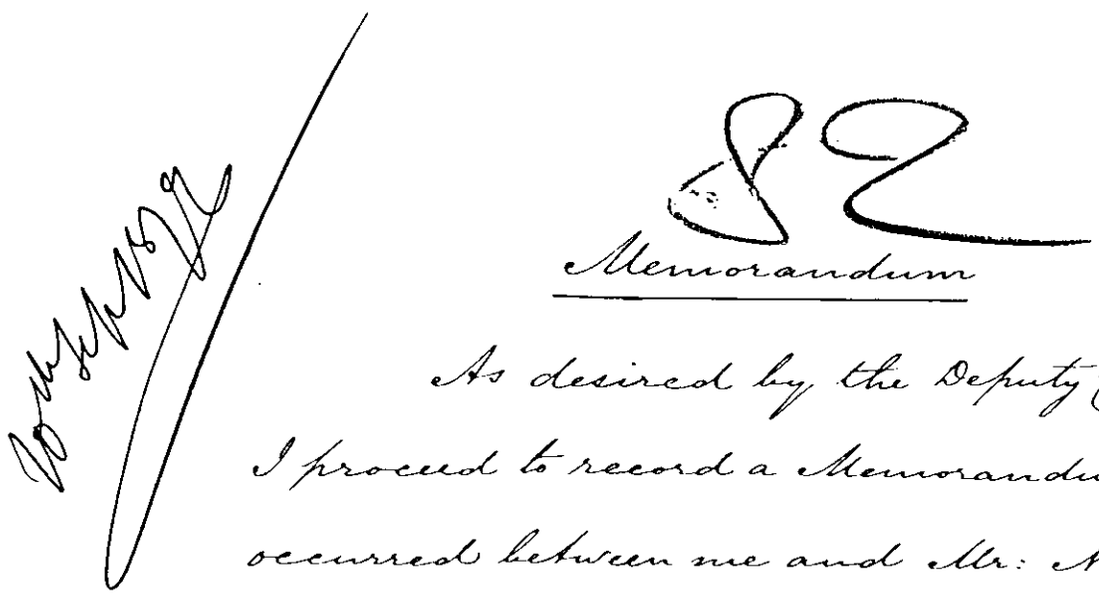
under such a threat do more
than grant a full knowledge
& thereupon addressed to my for-
mer letter.

I for a time pictured all
encomiums should fall de-
lighted to be relieved from
the case, such pressure & the
many hypothesis and con-
tinuous entanglements one
way or the other should
have been joyfully entered
I left Washington, though
actually apostrophizing the
whole work, but as said be-
fore under the instructions

Enclosure in letter dated [illegible]
Respectfully forwarded to Commanding
General, Dept. of Pacific, for information
[illegible]

[illegible]

[illegible]



Memorandum

As desired by the Deputy Commissioner I proceed to record a Memorandum of what occurred between me and Mr: Nepean Smith in connection with the prosecution of the case of Government ~~of~~ Tirumala Chari, I have no notes of the Conversation we had. But to the best of my recollection what happened was this - On the 1st September when I went into Court in accordance with the Deputy Commissioners instructions to conduct the prosecution jointly with Mr: Smith, I learnt from him that the case had been adjourned. Mr: Smith further told me that as under the Chief Commissioner's late orders it was competent to a District Magistrate to appoint any one he pleased, in supercession of a Public Prosecutor, he would like to have it clearly ruled whether I was to be in sole charge or he, as he did not like the idea of sharing the responsibility of prosecution with another. I said it was not for me to decide the point and he was welcome

welcome to speak to the Deputy Commissioner and have the question settled. He appears to have had a consultation with the Deputy Commissioner, the result of which is already known to the Deputy Commissioner. On the evening of the 2nd September however, i.e. the evening before the trial was taken up Mr: Smith came to me and in the course of our consultation about the coming trial, he said he believed the 5th and 6th tree charges could not be sustained and he should withdraw them. I differed from him and said that these two charges were if anything better supportable than the 4th. He then said he was sorry we differed, and he also said he, if left to himself, should not put forth certain evidence in regard to certain charges in which also I believe I had difference with them - Our views were also divergent in regard to the Kitchen Fraud Charges but as there was so much disagreement between us at the very outset with the tree Charges, I do not think we discussed the

Note - I had previously informed Mr Smith charge No. 5 should be retained, for it was very strong

details

details of the Kitchen Charges that Evening, but I remember Mr: Smith's [illegible] for not pressing some of these also, and wished to have others simplified and amended. Next morning, i. e. 3rd September before commencement of trial Mr: Smith represented to the Court that I had been deputed to conduct the prosecution jointly with him as on the occasion of the first trial, but that as our views regarding the prosecution differed, and as he did not like to share the responsibility of the prosecution (whatever that may mean), with another he begged leave to withdraw. I was next asked about the prosecution I said it was true we differed on material points and as my appointment was worded generally I was willing to undertake the prosecution. Mr: Smith I heard, left the next day for Bangalore.

H Madhavarao
Assistant Commissioner

10th Sept 79

Tumkur

D

Enclosure Marked D

Mr. Mendhams Reply memo as to the Difference between him & Mr. R. Smith